

## 16B C.J.S. Constitutional Law § 1207

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### Constitutional Law

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### PART VI. Privileges and Immunities; Equal Protection

#### XV. Privileges and Immunities of Citizens and Related Matters

##### A. Constitutional Provisions

## § 1207. Fourteenth Amendment

Topic Summary | References | Correlation Table

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  2910 to 2916, 2920, 2922 to 2926, 2929 to 2931

**The privileges and immunities protected by the Fourteenth Amendment are only those arising under the Constitution and laws of the United States and not those accruing from state citizenship.**

A statute which abridges privileges or immunities of citizens of the United States is unconstitutional under the Fourteenth Amendment to the Federal Constitution.<sup>1</sup> The Fourteenth Amendment does not forbid all discrimination or inequality, and certain privileges may be granted some and denied to others, under some circumstances, if they are granted or denied on the same terms and if there exists a reasonable basis therefor.<sup>2</sup> The privileges and immunities protected by this clause of the United States Constitution are only those which owe their existence to the federal government, its national character, its Constitution, or its laws,<sup>3</sup> and not such rights as accrue from state citizenship.<sup>4</sup>

These privileges and immunities include the right of ingress and egress from state to state<sup>5</sup> and the right to protection on the high seas and in foreign countries.<sup>6</sup> Such privileges and immunities include also the right to use the streets and public places,<sup>7</sup> the right peaceably to assemble,<sup>8</sup> the right to the enjoyment of life and liberty, to

acquire and possess property of every kind, and to pursue happiness and safety.<sup>9</sup> Additionally, the guaranty of the rights and immunities of a citizen insures to him or her the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked.<sup>10</sup>

Such privileges and immunities do not include the right to be secure in one's house,<sup>11</sup> the right to exemption from unreasonable searches and seizures,<sup>12</sup> protection against false imprisonment by state officers,<sup>13</sup> and the right to attend the public schools of the state.<sup>14</sup> They also do not include the right to succeed to property<sup>15</sup> or the right to fish in the state's waters.<sup>16</sup> They further do not include the right to act as an agent of a foreign corporation prohibited from doing business in the state,<sup>17</sup> the right to trial by jury in a suit at common law,<sup>18</sup> the right to practice law in the state courts,<sup>19</sup> or the right of suffrage or the right to vote as in a local bond election.<sup>20</sup> Still yet not included is the right to become a candidate for,<sup>21</sup> or to hold,<sup>22</sup> a state office, or the right of a state to legislate on the question of elections generally.<sup>23</sup>

The exemption from self-incrimination is not one of the privileges and immunities of citizens of the United States which the Fourteenth Amendment to the Federal Constitution forbids the states to abridge.<sup>24</sup> Such amendment does not prevent a state from prescribing the qualifications of jurors, provided no discrimination is made because of race or color.<sup>25</sup>

The guaranty contained in the Federal Constitution requires a state to give a citizen of the United States who becomes a bona fide resident of the state the rights, privileges, and immunities secured by the state constitution to the state's own citizens.<sup>26</sup> However, such guaranty does not entitle a person to enjoy in his or her own state privileges which citizens of other states enjoy under the laws of their respective states,<sup>27</sup> or to enjoy in another state privileges which he or she enjoys in the home state,<sup>28</sup> or any other or greater privileges than those enjoyed by the citizens of such other state.<sup>29</sup>

Such constitutional provision operates only as a protection against state action,<sup>30</sup> which may include action by a municipal corporation.<sup>31</sup> However, it does not operate to protect against action by individuals<sup>32</sup> or by the federal government.<sup>33</sup>

The rights which a citizen enjoys by reason of United States citizenship are protected against the action of his or her own state as well as against that of other states in which he or she may happen to be.<sup>34</sup> The provision applies to all citizens of the United States, wherever domiciled,<sup>35</sup> and a state cannot abridge privileges of a citizen of the United States even though he or she is a resident of the state which undertakes to do so.<sup>36</sup> No new privileges and immunities are conferred on citizens by the Amendment but, rather, it simply provides an additional guaranty for the enforcement of those already existing.<sup>37</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The Fourteenth Amendment, U.S.C.A. is not intended to protect individual rights against individual invasion, but to nullify and make void all state legislation and state action which impairs the privileges of citizens of the United

States, etc.; and therefore Congress has no authority to create a code of municipal law for the regulation of private rights. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

Residency requirement of Texas statute, which provided certain Texas veterans with tuition waivers at public universities if they enlisted in Texas or were residents of Texas at the time they enlisted, did not infringe right to travel under Fourteenth Amendment's Privileges and Immunities Clause of veteran who was a Texas resident attending a Texas law school, but had enlisted in Georgia while a Georgia resident; statute imposed no penalty on new entrants to the state, and even if it did, residency requirement was justified because the tuition was a portable benefit that could be received in Texas and enjoyed long thereafter if the recipient chose to immediately leave the state. U.S. Const. Amend. 14. *Harris v. Hahn*, 827 F.3d 359 (5th Cir. 2016).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Apodaca v. U.S.*, 188 F.2d 932 (10th Cir. 1951).  
Ala.—*Alabama Public Service Commission v. Mobile Gas Co.*, 213 Ala. 50, 104 So. 538, 41 A.L.R. 872 (1925).  
Cal.—*People v. Gidaly*, 35 Cal. App. 2d Supp. 758, 93 P.2d 660 (App. Dep't Super. Ct. 1939).  
Haw.—*State v. Johnston*, 51 Haw. 195, 51 Haw. 259, 456 P.2d 805 (1969).
- 2 Ariz.—*Schrey v. Allison Steel Mfg. Co.*, 75 Ariz. 282, 255 P.2d 604 (1953).  
S.D.—*Clem v. City of Yankton*, 83 S.D. 386, 160 N.W.2d 125 (1968).  
Wash.—*Sparkman & McLean Co. v. Govan Inv. Trust*, 78 Wash. 2d 584, 478 P.2d 232 (1970).
- 3 U.S.—*Snowden v. Hughes*, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944).  
Ariz.—*Valley Nat. Bank of Phoenix v. Glover*, 62 Ariz. 538, 159 P.2d 292 (1945).  
Conn.—*State v. Dinsmore*, 34 Conn. Supp. 674, 388 A.2d 439 (Super. Ct. 1977).  
Ga.—*Walker v. Whittle*, 83 Ga. App. 445, 64 S.E.2d 87 (1951).  
Or.—*Thompson v. Dickson*, 202 Or. 394, 275 P.2d 749 (1954).  
R.I.—*Morrison v. Lamarre*, 75 R.I. 176, 65 A.2d 217 (1949).  
Wis.—*Weinberg v. Kluchesky*, 236 Wis. 99, 294 N.W. 530 (1940).
- 4 U.S.—*Snowden v. Hughes*, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944); *Perez Gonzalez v. Irizarry*, 387 F. Supp. 942 (D.P.R. 1974).  
Cal.—*Steiner v. Darby*, 88 Cal. App. 2d 481, 199 P.2d 429 (2d Dist. 1948).  
Ga.—*Walker v. Whittle*, 83 Ga. App. 445, 64 S.E.2d 87 (1951).  
Or.—*Thompson v. Dickson*, 202 Or. 394, 275 P.2d 749 (1954).  
R.I.—*Morrison v. Lamarre*, 75 R.I. 176, 65 A.2d 217 (1949).  
Wis.—*Weinberg v. Kluchesky*, 236 Wis. 99, 294 N.W. 530 (1940).
- 5 U.S.—*Jenkins v. McCollum*, 446 F. Supp. 667 (N.D. Ala. 1978).  
N.Y.—*Matter of Kathie L.*, 100 Misc. 2d 173, 418 N.Y.S.2d 859 (Fam. Ct. 1979).  
Right to travel, generally, see § 786.
- 6 U.S.—*Charge to Grand Jury*, 30 F. Cas. 1005, No. 18260 (C.C.W.D. Tenn. 1875).
- 7 U.S.—*Shuttlesworth v. City of Birmingham*, Ala., 394 U.S. 147, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969).  
Ohio—*City of Cleveland v. Tussey*, 27 Ohio Op. 367, 39 Ohio L. Abs. 554, 13 Ohio Supp. 11 (Mun. Ct. 1943).
- 8 U.S.—*Hague v. Committee for Indus. Organization*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
- 9 U.S.—*Valle v. Stengel*, 176 F.2d 697 (3d Cir. 1949).  
Pa.—*In re Harrison's Estate*, 23 Pa. Dist. 605, 1914 WL 4477 (Pa. Orphans' Ct. 1914), *aff'd*, 250 Pa. 129, 95 A. 406 (1915).

- 10 U.S.—Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).  
Ill.—Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).  
**Felons**  
The Fourteenth Amendment authorized complete abrogation of felons' voting rights, and thus, Tennessee's reenfranchisement statute could not have violated the Privileges and Immunities Clause by conditioning felons' reenfranchisement on the payment of victim restitution and child support obligations.  
U.S.—Johnson v. Bredeesen, 624 F.3d 742 (6th Cir. 2010).
- 11 Ga.—Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).
- 12 Ga.—Johnson v. State, 152 Ga. 271, 109 S.E. 662, 19 A.L.R. 641 (1921); Walker v. Whittle, 83 Ga. App. 445, 64 S.E.2d 87 (1951).
- 13 U.S.—Watkins v. Oaklawn Jockey Club, 86 F. Supp. 1006 (W.D. Ark. 1949), judgment aff'd, 183 F.2d 440 (8th Cir. 1950).
- 14 Cal.—Ward v. Flood, 48 Cal. 36, 1874 WL 1216 (1874).
- 15 Ga.—Pettiford v. Frazier, 226 Ga. 438, 175 S.E.2d 549 (1970).  
Ill.—People v. O'Donnell, 327 Ill. 474, 158 N.E. 727 (1927).
- 16 U.S.—Thomson v. Dana, 52 F.2d 759 (D. Or. 1931), aff'd, 285 U.S. 529, 52 S. Ct. 409, 76 L. Ed. 925 (1932).  
Mich.—People v. Zimberg, 321 Mich. 655, 33 N.W.2d 104 (1948).
- 17 N.J.—Hickman v. State, 62 N.J.L. 499, 41 A. 942 (N.J. Sup. Ct. 1898), aff'd, 63 N.J.L. 666, 44 A. 1099 (N.J. Ct. Err. & App. 1899).
- 18 Tex.—Wooten v. Dallas Hunting & Fishing Club, Inc., 427 S.W.2d 344 (Tex. Civ. App. Dallas 1968).
- 19 Neb.—State ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302, 144 A.L.R. 138 (1942).  
N.C.—Baker v. Varser, 240 N.C. 260, 82 S.E.2d 90 (1954).  
Utah—Ruckenbrod v. Mullins, 102 Utah 548, 133 P.2d 325, 144 A.L.R. 839 (1943).
- 20 Ga.—Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221 (1949).  
Mo.—State ex inf. McKittrick ex rel. Ham v. Kirby, 349 Mo. 988, 163 S.W.2d 990 (1942).  
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).
- 21 U.S.—Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944); Heiser v. Rhodes, 305 F. Supp. 269, 24 Ohio Misc. 185, 51 Ohio Op. 2d 370, 53 Ohio Op. 2d 257 (S.D. Ohio 1969).  
R.I.—Morrison v. Lamarre, 75 R.I. 176, 65 A.2d 217 (1949).
- 22 U.S.—Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970).  
Ala.—McCullough v. State ex rel. Burrell, 352 So. 2d 1121 (Ala. 1977).
- 23 U.S.—Pirtle v. Brown, 118 F.2d 218, 139 A.L.R. 557 (C.C.A. 6th Cir. 1941).  
Ill.—People ex rel. Gash v. Sweitzer, 282 Ill. 171, 118 N.E. 477 (1917).  
Neb.—State ex rel. Beeson v. Marsh, 150 Neb. 233, 34 N.W.2d 279 (1948).
- 24 U.S.—In re Tracy & Co., 177 F. 532 (S.D. N.Y. 1910).  
Ga.—Hysler v. State, 148 Ga. 409, 96 S.E. 884 (1918).  
Ind.—Voelker v. Tyndall, 226 Ind. 43, 75 N.E.2d 548 (1947).
- 25 U.S.—Jackanin v. Carey, 476 F. Supp. 420 (E.D. N.Y. 1979), aff'd, 633 F.2d 204 (2d Cir. 1980).  
Haw.—State v. Johnston, 51 Haw. 195, 51 Haw. 259, 456 P.2d 805 (1969).  
Ky.—Owens v. Commonwealth, 188 Ky. 498, 222 S.W. 524 (1920).
- 26 U.S.—Henderson v. U.S., 63 F. Supp. 906 (D. Md. 1945).  
Ariz.—Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945).  
Ind.—State v. Griffin, 226 Ind. 279, 79 N.E.2d 537 (1948).
- 27 Ind.—Mutual Mfg. Co. v. Alspaugh, 174 Ind. 381, 91 N.E. 504 (1910).
- 28 Ind.—Mutual Mfg. Co. v. Alspaugh, 174 Ind. 381, 91 N.E. 504 (1910).
- 29 Ala.—Brown v. City of Birmingham, 140 Ala. 590, 37 So. 173 (1904).

Cal.—Starr v. Starr, 121 Cal. App. 2d 633, 263 P.2d 675 (3d Dist. 1953) (disapproved of on other grounds by, Kulko v. Superior Court, 19 Cal. 3d 514, 138 Cal. Rptr. 586, 564 P.2d 353 (1977)).

30 U.S.—Powe v. U.S., 109 F.2d 147 (C.C.A. 5th Cir. 1940).

Ohio—Colbert v. Coney Island, Inc., 97 Ohio App. 311, 56 Ohio Op. 106, 121 N.E.2d 911 (1st Dist. Hamilton County 1954).

31 U.S.—Whisler v. City of West Plains, Mo., 43 F. Supp. 654 (W.D. Mo. 1942), judgment aff'd, 137 F.2d 938 (C.C.A. 8th Cir. 1943).

Pa.—Com. v. Vuletich, 42 Pa. D. & C. 208, 1941 WL 3057 (Quar. Sess. 1941).

32 U.S.—Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950).

Ohio—Colbert v. Coney Island, Inc., 97 Ohio App. 311, 56 Ohio Op. 106, 121 N.E.2d 911 (1st Dist. Hamilton County 1954).

33 U.S.—Mulligan v. U.S., 120 F. 98 (C.C.A. 8th Cir. 1903); Farrell v. U S, 110 F. 942 (C.C.A. 8th Cir. 1901).

34 U.S.—Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co., 1 Abbott 388, 15 F. Cas. 649, No. 8408 (C.C.D. La. 1870).

35 U.S.—Feely v. Sidney S. Schupper Interstate Hauling System, 72 F. Supp. 663 (D. Md. 1947).

36 Ind.—Greathouse v. Board of School Com'rs of City of Indianapolis, 198 Ind. 95, 151 N.E. 411 (1926).

37 U.S.—Henderson v. U.S., 63 F. Supp. 906 (D. Md. 1945).

Minn.—State ex rel. Smiley v. Holm, 184 Minn. 228, 238 N.W. 494 (1931).

W. Va.—Hinebaugh v. James, 119 W. Va. 162, 192 S.E. 177, 112 A.L.R. 59 (1937).

**Positive grant of legislative power**

Enforcement clause of Fourteenth Amendment is positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure guaranties of such Amendment. However, such power is limited to adopting measures to enforce guaranties of amendment, and such clause grants Congress no power to restrict, abrogate, or dilute such guaranties.

U.S.—Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717, 16 L. Ed. 2d 828 (1966).